

FILED

MAY 17 2016

**SECRETARY, BOARD OF
OIL, GAS & MINING**

**BEFORE THE BOARD OF OIL, GAS AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

**IN THE MATTER OF THE REQUEST
FOR AGENCY ACTION OF AXIA
ENERGY II, LLC FOR AN ORDER
MODIFYING THE BOARD'S ORDERS
ENTERED IN CAUSE NOS. 131-14,
139-42, 139-90 TO ESTABLISHING
SPECIAL 2,560-ACRE (OR
SUBSTANTIAL EQUIVALENT)
DRILLING UNITS FOR THE
PRODUCTION OF OIL, GAS AND
ASSOCIATED HYDROCARBONS
FROM THE LOWER GREEN RIVER-
WASATCH (COLTON) FORMATIONS,
COMPRISED OF SECTIONS 27, 28, 33
AND 34, AND SECTIONS 29 THROUGH
32, RESPECTIVELY, TOWNSHIP 2
SOUTH, RANGE 1 WEST, USM,
DUCHESNE AND Uintah COUNTIES,
UTAH.**

**REPLY TO AXIA'S RESPONSE TO
RESPONDENT'S OBJECTION &
MOTION FOR ORDER TO
CONTINUE HEARING**

Docket No. 2016-011

Cause No. 139-138

[Request for Expedited Decision]

EP Energy E&P Company, L.P. ("EP"), by and through its counsel, Phillip Wm. Lear and Clifford B. Parkinson, of Lear & Lear PLLC, submits its reply to the Axia Energy II, LLC's ("Axia") Memorandum in Opposition to EP Energy E&P Company, L.P.'s Motion for Continuance ("Response").

Axia concedes that EP was not served a copy of the Request for Agency Action. Nevertheless, Axia contends that no continuance is in Order for the following four reasons: Axia alleges that (1) EP found the Request for Agency Action ("Request") in sufficient time to

develop a response; (2) EP “only owns a very small working interest ... and [an] overriding royalty interest in” the Drilling Unit proposed by the Request, Response at 3, and therefore should not be permitted a continuance; (3) the issues raised in the Request are not so complicated or novel in nature as to require a continuance; (4) and Axia will suffer an undue burden if a continuance is granted due to Axia’s tight drilling schedule.

I. AXIA ATTEMPTS TO CHARACTERIZE A CONCRETE DEPRIVATION OF NOTICE AND DUE PROCESS AS IMMATERIAL. IT IS NOT.

Axia casts its concrete failure of due process as immaterial. Axia’s position undermines the integrity of the procedural regulations of the Board and should not be entertained. Axia alleges that “[i]t is common practice for those desiring to respond and object to a Request for agency action to wait until the petitioner’s technical exhibits have been filed.” Response at 3. This statement stands unsubstantiated and runs counter to present counsels’ experience. Axia continues, stating that, despite finding the Request online nearly two weeks after it should have been served by Axia, EP “essentially and for all intents and practical purposes had the same amount of time in which to file a response to the Request had the Request been properly mailed in the first instance.” Response at 3-4. Contending that EP, by finding the Request on its own on the same day that Axia’s exhibits were filed, is not prejudiced, ignores the fact that Axia’s failure to serve EP deprived EP of nearly two weeks that it could have spent collecting technical, geological, and legal information vital to its response.

Furthermore, EP was deprived of its regulatory due process. The Board's notice and service requirements are specifically designed to afford owners adequate time to prepare their responses. That is the essence of due process. By truncating EP's response period by two weeks, Axia has denied EP the opportunity to research and prepare a meaningful response. A continuance would allow EP the opportunity to properly address the issues raised in the Request.

II. THE SIZE OF EP'S WORKING INTEREST IN THE PROPOSED DRILLING UNITS IS IRRELEVANT.

EP owns a legally protected interest in the proposed Drilling Units. Axia in effect argues that relatively smaller interest is not entitled to the same regulatory due process as a larger interest. The size of EP's working interest in the proposed Drilling Units is immaterial. Working interest owners, regardless of the size of their working interest, are entitled to proper notice and service by regulation. *See* Utah Administrative Code R649-10-3(2.4) ("The person requesting agency action shall file the request with the division and shall send a copy by mail to each person known to have a direct interest in the requested agency action unless previously waived in writing by each person entitled to receive notice of the requested agency action."); *see also* R641-105-100 ("Petitioner will file with the petition a list of the names and last known addresses of all persons ... *whose legally protected interest may be affected thereby.*") (italics added)."

Furthermore, EP's interest in the outcome of this Request is based on more than its working interest in the sections subject to this Request. EP holds large interests directly offsetting the proposed Drilling Units in Township 2 South, Range 1 West, Sections 19, 20, 21,

22 and in Township 2 South, Range 2 West, Section 25. Furthermore, the Board should take judicial notice that EP is, by virtue of its 414 operated wells and approximately 180,000 net acres of leasehold and mineral interests in the Greater Altamont/Bluebell Field, the second largest producer in Utah. The precedent set by the Board's decision on this matter will affect not only EP's large interest in the Greater Altamont/ Bluebell Field, but will also have a direct impact on its interests adjacent to the proposed Drilling Units, given that the spacing and offsetting of wells is at issue in the Request.

Therefore, EP's interest at issue in this matter, in addition to being protected by regulation, is substantial and adds merit to EP's Motion for the hearing on this matter to be continued.

III. THE ISSUES RAISED IN THE REQUEST ARE NOVEL AND COMPLICATED AND MERIT A CONTINUANCE.

Axia trivializes, if not denies the novel nature of its Request. Axia supports its position by arguing that there have been "several requests filed and submitted to the Board addressing two-mile horizontal well development in the Lower Green River-Wasatch formations." Response at 3-4. However, there is more to Axia's Request than two-mile horizontal wells.

As has been noted by other parties objecting to the Request, Axia is requesting a novel non-consent penalty. The proposal that a non-consenting party for the first well be deemed non-consenting for the next six, *see* Request at 12, is entirely novel. Such a forfeiture of interest has never been considered by the Board and that would circumvent the statutory non-consent penalty

that presently exists and the Utah Supreme Court's interpretation thereof. *See* Utah Code § 40-6-2(11); *see also* *Hegarty v. Board of Oil, Gas and Mining*, 57 P.3d 1042 (Utah 2002) (establishing that non-consent penalties must be imposed on a well-by-well basis). A favorable decision by the Board for Axia in this matter would contradict current statute and Supreme Court precedent.

Axia also glosses over the fact it is requesting the largest drilling units this Board has ever considered. At present, the largest drilling units in the Uinta Basin are 1,280-acre units. Axia is requesting two special 2,560-acre units without conducting a pilot program which is the general practice of entities petitioning the Board for new sized drilling units. Axia makes no mention of the fact that larger drilling units dilute the control and interest of land and working interest owners and the ramifications of such dilution on owners' correlative rights. In light of this, Axia's Request is indeed novel and merits a continuance so that the best evidence can be marshaled by EP and the other parties opposing the Request.

Finally, Axia's Request is novel in its request for 300' setback for its wells. In requesting 300' setbacks, Axia seeks to reduce the current setback requirement by roughly 54%. This is indeed novel and requires the marshaling of geological evidence specific to this area to determine what setback requirement most effectively protects correlative rights. A continuance would enable the collection of such evidence.

In light of these issues, it is clear that the issues arising under the Request are novel and complicated and merit a continuance so that they can be properly scrutinized, given the far-ranging adverse effects that may flow from the Board's decision on such novel issues.

IV. ANY BURDEN EXPERIENCED BY AXIA AS A RESULT OF A ONE MONTH CONTINUANCE DOES NOT TRUMP EP'S STATUTORY RIGHTS TO DUE PROCESS AND THE INTEREST IN THE STATE GENERALLY IN THE FAR-REACHING ISSUES RAISED IN THE REQUEST.

Axia contends that a continuance will impose an undue burden on its drilling schedule. EP maintains that its tight drilling schedule is self-imposed. Axia knew or should have known that its novel Request would have raised major concerns with owners and the Board, and indeed it has. In anticipation of this, Axia should have filed with the Board earlier.

Finally, as a practical matter, EP notes that with the other objections that have been filed, the hearing on the Request is likely to be lengthy and complicated. The Board currently has this matter scheduled for hearing at 2:00 p.m. on May 25, 2016, along with two other matters. Given the reduced time allotted ahead of this month's hearing, EP would be unable to sufficiently and appropriately address Axia's request and the objections thereto so they can be presented and considered by the Board.

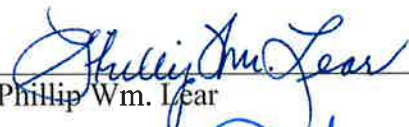
THEREFORE, EP respectfully Requests that this Board enter an order:


- a. Continuing the scheduled hearing on the REQUEST until the regularly scheduled hearing on June 22, 2016;

b. Allowing EP additional time until June 10, 2016, to file its objections to Axia's Request; and

c. Such other relief as the Board deems necessary and proper under the circumstances.

Respectfully submitted this 17th day of May, 2016.

By: 
Phillip Wm. Lear


Clifford B. Parkinson
Attorneys EP Energy E&P Company, L.P.
808 East South Temple Street
Salt Lake City, Utah 84102
Telephone: 801.538.5002
Facsimile: 801.538.5001

Petitioner's Address

EP Energy E&P Company, L.P.
1001 Louisiana Street / P. O. Box 4660 77210-4660
Houston, TX 77002
Attention: Michael Walcher